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*The Big 12 Conference, Inc.*

15  
16 **IN THE UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
17 **OAKLAND DIVISION**

18 IN RE COLLEGE ATHLETE NIL  
19 LITIGATION

Case No. 4:20-cv-03919 CW

20 **ANSWER OF DEFENDANT**  
21 **THE BIG 12 CONFERENCE, INC.**  
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**ANSWER AND ADDITIONAL DEFENSES OF**  
**DEFENDANT THE BIG 12 CONFERENCE, INC.**

The Big 12 Conference, Inc. ("Big 12"), by and through its undersigned attorneys, hereby answers and sets forth additional defenses to the Consolidated Amended Complaint (D.E. 164) ("Complaint").

**PRELIMINARY STATEMENT**

Except as otherwise expressly stated below, the Big 12 answers and responds only to those allegations contained in the Complaint that are directed toward it. The Big 12 is without sufficient knowledge or information to form a belief as to the truth of the allegations in the Complaint that are directed toward other defendants. Pursuant to Federal Rule of Civil Procedure 8(b)(5), such allegations are deemed denied.

To the extent that Plaintiffs' allegations rely upon media reports and other out-of-court statements, any response by the Big 12 admitting that such reports were published or that such statements were made does not constitute an admission as to the admissibility of such reports or statements or an admission as to the accuracy or truthfulness of their contents.

In addition, the Complaint contains 195 footnotes. To the extent the contents of those footnotes are not addressed in the text of the Big 12's answer to the Paragraph to which the footnote relates and/or to the extent that the content of any footnote can be read to contain factual allegations, the Big 12 denies each and every one of them.

**RESPONSES TO NUMBERED PARAGRAPHS OF COMPLAINT**

The Big 12 denies any and all allegations contained in the headings of the Complaint and responds to the numbered paragraphs of the Complaint as follows:

1. The Big 12 admits that Zion Williamson played basketball at Duke University in 2019 and participated in a game between Duke University and the University of North Carolina, and that his shoe appeared to fail during the game. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the

1 allegations included in Paragraph 1 concerning television viewers, speculation of  
2 unnamed persons about Zion Williamson's alleged knee sprain, and Nike stock value and  
3 therefore denies them. The Big 12 denies the remaining allegations of Paragraph 1.

4         2.       The Big 12 admits that NCAA rules in effect in 2019 established limitations  
5 on compensation provided to student-athletes for the actual or alleged use of their names,  
6 images, and likenesses. The Big 12 lacks sufficient knowledge or information to form a  
7 belief as to the truth of the allegations in Paragraph 2 concerning the alleged contract  
8 between Duke University and Nike and therefore denies them. The Big 12 denies the  
9 remaining allegations of Paragraph 2.

10        3.       The Big 12 admits that a small number of NCAA Division I athletic  
11 departments generate positive net revenues. The Big 12 further admits that NCAA rules  
12 have established limitations on compensation to student-athletes for the actual or alleged  
13 use of their names, images, and likenesses. The Big 12 lacks sufficient knowledge or  
14 information to form a belief as to the truth of the allegations in Paragraph 3 concerning  
15 alleged salaries of coaches and others and therefore denies them. The Big 12 denies the  
16 remaining allegations of Paragraph 3.

17         4.       The Big 12 admits that the NCAA Constitution and Bylaws contain rules  
18 governing the conduct of members relating to collegiate athletics, the benefits that may be  
19 provided to student-athletes, and other aspects of collegiate sports, and contain  
20 statements relating to the principles of amateurism and collegiate sports. The Big 12  
21 further admits that the NCAA has previously advanced amateurism as a justification for  
22 certain of the rules set forth in the NCAA Constitution and Bylaws. The Big 12 denies the  
23 remaining allegations of Paragraph 4.

24         5.       The Big 12 admits that Plaintiffs seek to challenge NCAA rules setting forth  
25 limitations on compensating student-athletes for use of their names, images, and  
26 likenesses. The Big 12 further admits that the NCAA Manual sets forth current NCAA  
27 rules. The Big 12 further admits that the NCAA issued an Interim NIL Policy (along with  
28 accompanying materials) effective July 1, 2021 (the date that certain state laws and

1 executive orders addressing NIL were effective or soon to be effective), with the result  
2 that certain activities relating to name, image, and likeness would not be impacted by the  
3 application of certain NCAA bylaws. The Big 12 denies the remaining allegations of  
4 Paragraph 5.

5 6. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations in Paragraph 6 concerning unattributed comments allegedly  
7 made by the NCAA and therefore denies them. The Big 12 denies the remaining  
8 allegations of Paragraph 6.

9 7. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
10 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
11 executive orders addressing NIL were effective or soon to be effective), with the result  
12 that certain activities relating to name, image and likeness would not be impacted by the  
13 application of certain NCAA bylaws. The Big 12 lacks sufficient knowledge or information  
14 to form a belief as to the truth of the allegations in Paragraph 7 concerning alleged  
15 comments made by the NCAA and profits derived by unidentified companies and  
16 therefore denies them. The Big 12 denies the remaining allegations of Paragraph 7.

17 8. The Big 12 admits that it is party to and/or receives revenue from certain  
18 sponsorship agreements. Upon information and belief, the Big 12 further admits that the  
19 NCAA and other conferences, schools and, in some instances, coaches, have sponsorship  
20 or endorsement agreements. The Big 12 lacks sufficient knowledge or information to form  
21 a belief as to the truth of the remaining allegations in Paragraph 8 concerning alleged  
22 agreements between companies and persons or entities other than the Big 12 and therefore  
23 denies them. The Big 12 denies the remaining allegations of Paragraph 8.

24 9. The Big 12 admits that the NCAA and some conferences and schools utilize  
25 certain social media platforms. The Big 12 further admits that the NCAA issued an Interim  
26 NIL Policy (along with accompanying materials) effective July 1, 2021 (the date that  
27 certain state laws and executive orders addressing NIL were effective or soon to be  
28 effective), with the result that certain activities relating to name, image and likeness would

1 not be impacted by the application of certain NCAA bylaws. The Big 12 lacks sufficient  
2 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
3 9 concerning the financial rewards allegedly received by unidentified persons from social  
4 media and therefore denies them. The Big 12 denies the remaining allegations of  
5 Paragraph 9.

6 10. The Big 12 lacks sufficient knowledge or information to form a belief as to  
7 the truth of the allegations in Paragraph 10 concerning alleged statements of Oliver Luck  
8 and therefore denies them. The remaining allegations in Paragraph 10 contain conclusions  
9 of law to which no response is required. To the extent any response is necessary, the Big  
10 12 denies the remaining allegations of Paragraph 10.

11 11. The Big 12 specifically denies that it has violated the federal antitrust laws  
12 or common law and denies the remaining allegations of Paragraph 11.

13 12. The Big 12 admits that NCAA rules include limitations on compensation to  
14 student-athletes for the alleged use of their names, images, and likenesses. The Big 12  
15 further admits that the NCAA issued an Interim NIL Policy (along with accompanying  
16 materials) effective July 1, 2021 (the date that certain state laws and executive orders  
17 addressing NIL were effective or soon to be effective), with the result that certain activities  
18 relating to name, image and likeness would not be impacted by the application of certain  
19 NCAA bylaws. Upon information and belief, the Big 12 admits that there have been  
20 unverified media reports that certain student-athletes and in some sports have been  
21 offered and/or accepted compensation for the alleged use of their names, images, and  
22 likenesses following the passage of state NIL laws and issuance of the Interim NIL Policy.  
23 The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
24 allegations and quotations in Paragraph 12 concerning Katelyn Ohashi and therefore  
25 denies them. The Big 12 denies the remaining allegations of Paragraph 12.

26 13. The Big 12 lacks sufficient knowledge or information to form a belief as to  
27 the truth of the allegations in Paragraph 13 concerning Dave Bradley, Nick Saban, and  
28

1 unidentified “recent analyses” and therefore denies them. The Big 12 denies the remaining  
2 allegations of Paragraph 13.

3 14. Upon information and belief, the Big 12 admits that according to unverified  
4 media reports, certain representatives of NCAA members institutions have made public  
5 comments regarding possible revision of NCAA NIL rules and considerations relating to  
6 any such revisions. The Big 12 lacks sufficient knowledge or information to form a belief  
7 as to the truth of the allegations in Paragraph 14 concerning the salaries and/or purported  
8 comments of Scott Frost and Jim Harbaugh and therefore denies them. The Big 12 denies  
9 the remaining allegations of Paragraph 14.

10 15. The Big 12 admits that recently enacted state statutes, some of which became  
11 effective July 1, 2021, may require that institutions offer certain educational resources and  
12 services to student-athletes relating to name, image, and likeness, and that some NCAA  
13 member institutions have offered such educational resources and services. The Big 12  
14 lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
15 in Paragraph 15 concerning alleged comments of Rick George, the alleged programs of  
16 the University of Nebraska and the University of Colorado, and the NAIA and therefore  
17 denies them. The Big 12 denies the remaining allegations of Paragraph 15.

18 16. Upon information and belief, the Big 12 admits that the NCAA entered an  
19 eight-year extension of its media contract to broadcast the NCAA Division I basketball  
20 tournament. The Big 12 lacks sufficient knowledge or information to form a belief as to  
21 the truth of the allegations in Paragraph 16 concerning the terms of any contracts entered  
22 into by other entities and therefore denies them. The Big 12 denies the remaining  
23 allegations of Paragraph 16.

24 17. The Big 12 admits that California has passed the Fair Pay to Play Act and  
25 that multiple other states have introduced or passed legislation or issued executive orders  
26 relating to NIL. The Big 12 denies the remaining allegations of Paragraph 17.

27 18. The Big 12 admits that the NCAA and certain of its working groups have  
28 studied, issued statements regarding, and drafted proposed rules for consideration

1 related to certain NIL issues in 2019 and 2020. The Big 12 denies the remaining allegations  
2 of Paragraph 18.

3 19. The Big 12 admits that defendants in *Alston* appealed the Ninth Circuit's  
4 decision to the United States Supreme Court. The Big 12 denies the remaining allegations  
5 of Paragraph 19.

6 20. The Big 12 admits that the NCAA's Interim NIL Policy became effective on  
7 July 1, 2021 and that the laws of various states were due to go into effect on that date. The  
8 Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
9 allegations in Paragraph 20 concerning alleged lobbying efforts of the NCAA and  
10 therefore denies them. The Big 12 denies the remaining allegations of Paragraph 20.

11 21. The Big 12 admits that on June 21, 2021 the United States Supreme Court  
12 issued its opinion in *Alston*. The Big 12 further admits that on June 24, 2021 this Court  
13 issued its ruling on Defendants' Motion to Dismiss Plaintiffs' initial complaint in this  
14 action. The Big 12 denies the remaining allegations of Paragraph 21.

15 22. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
16 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
17 executive orders addressing NIL were effective or soon to be effective), with the result  
18 that certain activities relating to name, image and likeness could or would not be impacted  
19 by the application of certain NCAA bylaws. The Big 12 denies the remaining allegations  
20 of Paragraph 22.

21 23. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
22 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
23 executive orders addressing NIL were effective or soon to be effective), with the result  
24 that certain activities relating to name, image and likeness would not be impacted by the  
25 application of certain NCAA bylaws. The Big 12 denies the remaining allegations of  
26 Paragraph 23.

27 24. Upon information and belief, the Big 12 admits that, according to unverified  
28 media reports, certain student-athletes at some schools and in some sports have been



1 offered and/or accepted compensation for the alleged use of their names, images, and  
2 likenesses following the passage of state NIL laws and issuance of the Interim NIL Policy.  
3 The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
4 allegations included in Paragraph 24 concerning the University of Florida, the University  
5 of Michigan, and the industry affiliations of entities allegedly entering agreements with  
6 student-athletes and therefore denies them. Upon information and belief, the Big 12  
7 admits that according to unverified media reports, the University of North Carolina and  
8 Brandr announced a program in July 2021 addressing licensing of marks in certain  
9 circumstances; however, the Big 12 lacks sufficient knowledge or information sufficient to  
10 form a belief as to the truth of the allegations about the terms of the program and therefore  
11 denies them. The Big 12 denies the remaining allegations of Paragraph 24.

12 25. The Big 12 lacks sufficient knowledge or information to form a belief as to  
13 the truth of the allegations of Paragraph 25 and therefore denies them.

14 26. The Big 12 lacks sufficient knowledge or information to form a belief as to  
15 the truth of the allegations of Paragraph 26 and therefore denies them.

16 27. The Big 12 admits that state laws and the Interim NIL Policy have created  
17 opportunities for student-athletes to take advantage of NIL rights. Upon information and  
18 belief, the Big 12 admits that according to unverified media reports certain student-  
19 athletes at the University of Texas are purportedly engaged in activities related to alleged  
20 apparel ventures. The Big 12 lacks sufficient knowledge or information to form a belief as  
21 to the truth of the remaining allegations of Paragraph 27 and therefore denies them.

22 28. The Big 12 lacks sufficient knowledge or information to form a belief as to  
23 the truth of the allegations of Paragraph 28 and therefore denies them.

24 29. The Big 12 admits that recently enacted state statutes, some of which became  
25 effective July 1, 2021, may require that institutions offer certain educational resources and  
26 services to student-athletes relating to name, image, and likeness, and that some NCAA  
27 member institutions have offered such educational resources and services. The Big 12  
28



1 lacks sufficient knowledge or information to form a belief as to the truth of the remaining  
2 allegations of Paragraph 29 and therefore denies them.

3 30. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations in Paragraph 30 concerning alleged comments of unidentified  
5 schools across the country and therefore denies them. The Big 12 denies the remaining  
6 allegations of Paragraph 30.

7 31. The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in Paragraph 31 concerning alleged surveys and consumer  
9 sentiment and therefore denies them. The Big 12 denies the remaining allegations of  
10 Paragraph 31

11 32. The Big 12 denies the allegations of Paragraph 32.

12 33. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
13 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
14 executive orders addressing NIL were effective or soon to be effective), with the result  
15 that certain activities relating to name, image and likeness would not be impacted by the  
16 application of certain NCAA bylaws. The Big 12 lacks sufficient knowledge or information  
17 to form a belief as to the truth of the allegations in Paragraph 33 concerning alleged  
18 comments of Mark Emmert and therefore denies them. The Big 12 denies that the  
19 injunction described in Paragraph 33 would be appropriate or legally justified. The Big 12  
20 denies the remaining allegations of Paragraph 33.

21 34. The Big 12 denies that an injunction as described in Paragraph 34 would be  
22 appropriate or legally justified. The Big 12 denies the remaining allegations of Paragraph  
23 34.

24 35. The Big 12 admits that Plaintiffs seek an injunction but denies that Plaintiffs  
25 are entitled to an injunction. The Big 12 specifically denies that it has engaged in any  
26 unlawful or anticompetitive conduct. The Big 12 denies the remaining allegations of  
27 Paragraph 35.

1           36.     The Big 12 admits that Plaintiffs seek the relief stated in Paragraph 36 but  
2     denies that Plaintiffs are entitled to such relief. The Big 12 specifically denies that it has  
3     engaged in any unlawful or anticompetitive conduct. The Big 12 denies the remaining  
4     allegations of Paragraph 36.

5           37.     The Big 12 admits that Plaintiffs seek the relief stated in Paragraph 37 but  
6     denies that Plaintiffs are entitled to such relief. The Big 12 specifically denies that it has  
7     engaged in unlawful or anticompetitive conduct. The Big 12 denies the remaining  
8     allegations of Paragraph 37.

9           38.     The Big 12 admits that Plaintiffs seek the relief stated in Paragraph 38 but  
10    denies that Plaintiffs are entitled to such relief. The Big 12 specifically denies that it has  
11    engaged in any unlawful or anticompetitive conduct. The Big 12 denies the remaining  
12    allegations of Paragraph 38.

13          39.     The allegations of Paragraph 39 call for legal conclusions to which no  
14    response is required. To the extent any response is necessary, the Big 12 admits that  
15    Plaintiffs allege subject matter jurisdiction exists under the statutes cited in Paragraph 39,  
16    but denies that Plaintiffs or purported class members are entitled to any relief sought. The  
17    Big 12 denies the remaining allegations of Paragraph 39.

18          40.     The Big 12 denies the allegations of Paragraph 40 but does not challenge  
19    venue in this action.

20          41.     The Big 12 admits that the defendants have transacted business (as that term  
21    is used in venue statutes) throughout the United States and that the University of  
22    California–Berkeley, Stanford University, Santa Clara University, the University of San  
23    Francisco, and St. Mary’s College are located in the Northern District of California. The  
24    Big 12 denies the remaining allegations of Paragraph 41 but does not challenge personal  
25    jurisdiction in this action.

26          42.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
27    the truth of the allegations of Paragraph 42 and therefore denies them.

1           43.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 43 and therefore denies them.

3           44.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations of Paragraph 44 and therefore denies them.

5           45.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations of Paragraph 45 and therefore denies them.

7           46.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations of Paragraph 46 and therefore denies them.

9           47.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
10 the truth of the allegations of Paragraph 47 and therefore denies them.

11          48.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations of Paragraph 48 and therefore denies them.

13          49.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
14 the truth of the allegations of Paragraph 49 and therefore denies them.

15          50.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
16 the truth of the allegations of Paragraph 50 and therefore denies them.

17          51.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
18 the truth of the allegations of Paragraph 51 and therefore denies them.

19          52.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
20 the truth of the allegations of Paragraph 52 and therefore denies them.

21          53.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations of Paragraph 53 and therefore denies them.

23          54.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
24 the truth of the allegations of Paragraph 54 and therefore denies them.

25          55.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations of Paragraph 55 and therefore denies them.

27          56.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
28 the truth of the allegations of Paragraph 56 and therefore denies them.

1           57.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 57 and therefore denies them.

3           58.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations of Paragraph 58 and therefore denies them.

5           59.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations of Paragraph 59 and therefore denies them.

7           60.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations of Paragraph 60 and therefore denies them.

9           61.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
10 the truth of the allegations of Paragraph 61 and therefore denies them.

11          62.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations of Paragraph 62 and therefore denies them.

13          63.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
14 the truth of the allegations of Paragraph 63 and therefore denies them.

15          64.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
16 the truth of the allegations of Paragraph 64 and therefore denies them.

17          65.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
18 the truth of the allegations of Paragraph 65 and therefore denies them.

19          66.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
20 the truth of the allegations of Paragraph 66 and therefore denies them.

21          67.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations of Paragraph 67 and therefore denies them.

23          68.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
24 the truth of the allegations of Paragraph 68 and therefore denies them.

25          69.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations of Paragraph 69 and therefore denies them.

27          70.     The Big 12 lacks sufficient knowledge or information to form a belief as to  
28 the truth of the allegations of Paragraph 70 and therefore denies them.

1           71. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 71 and therefore denies them.

3           72. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations of Paragraph 72 and therefore denies them.

5           73. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations of Paragraph 73 and therefore denies them.

7           74. The Big 12 admits that the NCAA is an unincorporated not-for-profit  
8 educational organization founded in 1906 with its current principal office in Indianapolis,  
9 Indiana. The Big 12 further admits that the NCAA has more than 1,200 colleges,  
10 universities, and athletic conferences, including the Conference Defendants, which are  
11 located throughout the United States. The Big 12 lacks sufficient knowledge or  
12 information to form a belief as to the truth of the allegations in Paragraph 74 concerning  
13 comments the NCAA has allegedly made about whether it speaks and acts for colleges  
14 and universities on athletic matters at a national level and therefore denies them. The Big  
15 12 denies the remaining allegations of Paragraph 74.

16           75. The Big 12 admits that the NCAA and its members have adopted a  
17 constitution and bylaws, which set forth procedures for amendments thereto. The Big 12  
18 further admits that the NCAA enforces compliance with its bylaws and may impose  
19 penalties for noncompliance in some instances. The Big 12 denies the remaining  
20 allegations of Paragraph 75.

21           76. The Big 12 admits that the NCAA is comprised of numerous member  
22 institutions organized in three divisions and that some of those institutions sponsor  
23 football teams. The Big 12 lacks sufficient knowledge or information to form a belief as to  
24 the truth of the allegations included in Paragraph 76 concerning the specific number of  
25 institutions in different divisions or that sponsor football programs and therefore denies  
26 them. The Big 12 denies the remaining allegations of Paragraph 76.

27           77. The Big 12 lacks sufficient knowledge or information to form a belief as to  
28 the truth of the allegations of Paragraph 77 and therefore denies them.

1           78. Upon information and belief, the Big 12 admits that the Pac-12 is an  
2           unincorporated association with its principal offices located in California, that it is a multi-  
3           sport collegiate athletic conference, and a formal “conference member” of NCAA Division  
4           I. Upon information and belief, the Big 12 further admits that the Pac-12 is an IRS  
5           § 501(c)(3) entity. The Big 12 lacks sufficient knowledge or information to form a belief as  
6           to the truth of the remaining allegations of Paragraph 78 and therefore denies them.

7           79. The Big 12 admits that the Pac-12’s current members are the institutions  
8           identified in Paragraph 79. The Big 12 denies the remaining allegations of Paragraph 79.

9           80. The Big 12 denies the allegations of Paragraph 80.

10          81. Upon information and belief, the Big 12 admits that the Big Ten is a  
11          nonprofit corporation with its principal offices located in Illinois, that it is a multi-sport  
12          collegiate athletic conference, and a formal “conference member” of NCAA Division I.  
13          Upon information and belief, the Big 12 further admits that the Big Ten is an IRS § 501(c)(3)  
14          entity. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth  
15          of the remaining allegations of Paragraph 81 and therefore denies them.

16          82. The Big 12 admits that the Big Ten’s current members are the institutions  
17          identified in Paragraph 82, and that all of its football members are in the Football Bowl  
18          Subdivision. The Big 12 denies the remaining allegations of Paragraph 82.

19          83. The Big 12 denies the allegations of Paragraph 83.

20          84. The Big 12 admits that it is a nonprofit corporation with its principal offices  
21          located in Texas, that it is a multi-sport collegiate athletic conference, and a formal  
22          “conference member” of NCAA Division I. The Big 12 further admits that it is an IRS  
23          § 501(c)(3) entity and that it filed a 2017 IRS Form 990, which stated that the Big 12’s total  
24          revenue was \$373,924,498.00, the majority of which was distributed to its Member  
25          Institutions. The Big 12 denies the remaining allegations of Paragraph 84.

26          85. The Big 12 admits the allegations of Paragraph 85.

27          86. The Big 12 denies the allegations of Paragraph 86.

1           87. Upon information and belief, the Big 12 admits that the SEC is an  
2           unincorporated association with its principal offices located in Alabama, that it is a multi-  
3           sport collegiate athletic conference, and a formal “conference member” of NCAA Division  
4           I. Upon information and belief, the Big 12 further admits that the SEC is an IRS § 501(c)(3)  
5           entity. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth  
6           of the remaining allegations of Paragraph 87 and therefore denies them.

7           88. The Big 12 admits that the SEC’s current members are the institutions  
8           identified in Paragraph 88, and that all of its football members are in the Football Bowl  
9           Subdivision. The Big 12 denies the remaining allegations of Paragraph 88.

10          89. The Big 12 denies the allegations of Paragraph 89.

11          90. Upon information and belief, the Big 12 admits that the ACC is an  
12          unincorporated association with its principal offices located in Greensboro, North  
13          Carolina, that it is a multi-sport collegiate athletic conference, and a formal “conference  
14          member” of NCAA Division I. Upon information and belief, the Big 12 further admits that  
15          the ACC is an IRS § 501(c)(3) entity. The Big 12 lacks sufficient knowledge or information  
16          to form a belief as to the truth of the remaining allegations of Paragraph 90 and therefore  
17          denies them.

18          91. The Big 12 admits that the ACC’s current members are the institutions  
19          identified in Paragraph 91, and that all of its football members are in the Football Bowl  
20          Subdivision. The Big 12 denies the remaining allegations of Paragraph 91.

21          92. The Big 12 denies the allegations of Paragraph 92.

22          93. The Big 12 admits that Plaintiffs purport to give the terms identified in  
23          Paragraph 93 the definitions set forth therein but denies that the characterizations  
24          contained in those definitions and that those definitions are accurate or appropriate in this  
25          matter. The Big 12 denies the remaining allegations of Paragraph 93.

26          94. The Big 12 will respond separately to the various allegations in other  
27          Paragraphs of the Complaint and, except as expressly admitted in responses to such other  
28          allegations, denies the allegations of Paragraph 94.



1           95.     The Big 12 denies the allegations of Paragraph 95.

2           96.     The Big 12 admits that Plaintiffs seek to challenge NCAA rules that include  
3 limitations on compensation to student-athletes, including for the alleged use of their  
4 names, images, and likenesses. The Big 12 denies the remaining allegations of Paragraph  
5 96.

6           97.     The Big 12 admits that the NCAA Manual contains the provisions quoted in  
7 part from NCAA Bylaw 12.5.2.1 in Paragraph 97. The Big 12 further admits that the NCAA  
8 Manual sets forth NCAA rules, subject to the changes in application effected by the  
9 Interim NIL Policy, other NCAA guidance and interpretations, and state laws. The Big 12  
10 denies the remaining allegations of Paragraph 97.

11          98.     The Big 12 admits that the NCAA Manual contains the provisions quoted in  
12 part from NCAA Bylaw 12.5.2.2 in Paragraph 98. The Big 12 further admits that the NCAA  
13 Manual sets forth NCAA rules, subject to the changes in application effected by the  
14 Interim NIL Policy, other NCAA guidance and interpretations, and state laws. The Big 12  
15 denies the remaining allegations of Paragraph 98.

16          99.     The Big 12 admits that NCAA rules include limitations on compensation to  
17 student-athletes, including for the alleged use of their names, images, and likenesses,  
18 subject to the changes in application effected by the Interim NIL Policy, other NCAA  
19 guidance and interpretations, and state laws. The Big 12 denies the remaining allegations  
20 of Paragraph 99.

21          100.    The Big 12 admits that the NCAA Manual contains the provisions quoted in  
22 part from NCAA Bylaws 12.4.1 and 12.4.1.1 in Paragraph 100. The Big 12 further admits  
23 that the NCAA Manual sets forth NCAA rules, subject to the changes in application  
24 effected by the Interim NIL Policy, other NCAA guidance and interpretations, and state  
25 laws. The Big 12 denies the remaining allegations of Paragraph 100.

26          101.    The Big 12 admits that the NCAA Manual contains the provisions quoted in  
27 part from NCAA Bylaw 12.4.2.3 in Paragraph 101. The Big 12 further admits that the  
28 NCAA Manual sets forth NCAA rules, subject to the changes in application effected by

1 the Interim NIL Policy, other NCAA guidance and interpretations, and state laws. The Big  
2 12 denies the remaining allegations of Paragraph 101.

3 102. The Big 12 admits that the NCAA Manual contains the provisions quoted in  
4 part from NCAA Bylaw 12.4.4 in Paragraph 102. The Big 12 further admits that the NCAA  
5 Manual sets forth NCAA rules, subject to the changes in application effected by the  
6 Interim NIL Policy, other NCAA guidance and interpretations, and state laws. The Big 12  
7 denies the remaining allegations of Paragraph 102.

8 103. The Big 12 admits that the NCAA can enforce compliance with its bylaws  
9 and may, in some instances, impose various penalties for noncompliance as set forth in its  
10 bylaws. The Big 12 denies the remaining allegations of Paragraph 103.

11 104. The Big 12 admits that the NCAA Manual sets forth current NCAA rules,  
12 subject to the changes in application effected by the Interim NIL Policy, other NCAA  
13 guidance and interpretations, and state laws. The Big 12 lacks sufficient knowledge or  
14 information to form a belief as to the truth of the allegations in Paragraph 104 concerning  
15 what sponsors could or may do and therefore denies them. The Big 12 denies the  
16 remaining allegations of Paragraph 104.

17 105. The Big 12 denies the allegations of Paragraph 105.

18 106. The Big 12 denies the allegations of Paragraph 106.

19 107. The Big 12 admits that the NCAA Manual sets forth current NCAA rules,  
20 subject to the changes in application effected by the Interim NIL Policy, other NCAA  
21 guidance and interpretations, and state laws. The Big 12 denies the remaining allegations  
22 of Paragraph 107.

23 108. The Big 12 admits that NCAA rules include limitations on compensation to  
24 student-athletes, including for the alleged use of their names, images, and likenesses, and  
25 rules governing student-athlete eligibility and certain conduct, subject to the changes in  
26 application effected by the Interim NIL Policy, other NCAA guidance and interpretations,  
27 and state laws. The Big 12 denies the remaining allegations of Paragraph 108.

1           109. Upon information and belief, the Big 12 admits that schools in NCAA  
2 Divisions II and III offer fewer scholarships than those in Division I, and that collective  
3 bargaining agreements of the NFL and the NBA include restrictions on which individuals  
4 are eligible to play in those leagues and the timing of when they are eligible. The Big 12  
5 lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
6 included in Paragraph 109 concerning NAIA, NCCAA, and USCAA schools, and the  
7 allegations concerning whether recruits “rarely forego” opportunities to play Division I  
8 sports in order to play professionally, and therefore denies them. The Big 12 denies the  
9 remaining allegations of Paragraph 109.

10           110. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
11 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
12 executive orders addressing NIL were effective or soon to be effective), with the result  
13 that certain activities relating to name, image, and likeness would not be impacted by  
14 application of certain NCAA bylaws. The Big 12 denies the remaining allegations of  
15 Paragraph 110.

16           111. The Big 12 lacks sufficient knowledge or information to form a belief as to  
17 the truth of allegations in Paragraph 111 concerning whether or not any NCAA member  
18 institutions have paid NIL compensation to student-athletes and therefore denies them.  
19 The Big 12 denies the remaining allegations of Paragraph 111.

20           112. Upon information and belief, the Big 12 admits that there have been  
21 unverified media reports that certain student-athletes in some sports have been offered  
22 and/or accepted compensation for the alleged use of their names, images, and likenesses  
23 following the passage of state NIL laws and issuance of the Interim NIL Policy. The Big  
24 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
25 allegations in Paragraph 112 concerning whether or not any NCAA member institutions  
26 have paid NIL compensation to student-athletes. The Big 12 further lacks sufficient  
27 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
28

1 112 concerning Plaintiffs' awareness, or lack thereof, of NCAA member institutions' or  
2 conferences' NIL policies. The Big 12 denies the remaining allegations of Paragraph 112.

3 113. The Big 12 admits that recently enacted state statutes, some of which became  
4 effective July 1, 2021, may require that institutions offer certain educational resources and  
5 services to student-athletes relating to name, image, and likeness, and that some NCAA  
6 member institutions have offered such educational resources and services. The Big 12  
7 lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
8 in Paragraph 113 concerning alleged programs as of July 1, 2021, Michigan State, the  
9 University of Michigan, Ohio State, Stanford, and UC Berkeley and therefore denies them.  
10 The Big 12 denies the remaining allegations of Paragraph 113.

11 114. Upon information and belief, the Big 12 admits that there have been  
12 unverified media reports that certain student-athletes at some schools and in some sports  
13 have been offered and/or accepted compensation for the alleged use of their names,  
14 images, and likenesses following the passage of state NIL laws and issuance of the Interim  
15 NIL Policy. The Big 12 lacks sufficient knowledge or information to form a belief as to the  
16 truth of the allegations included in Paragraph 114 concerning Olivia Dunne and the  
17 alleged value of NIL rights and therefore denies them. The Big 12 denies the remaining  
18 allegations of Paragraph 114.

19 115. Upon information and belief, the Big 12 admits that there have been  
20 unverified media reports that certain student-athletes at some schools and in some sports  
21 have been offered and/or accepted compensation for the alleged use of their names,  
22 images, and likenesses following the passage of state NIL laws and issuance of the Interim  
23 NIL Policy. The Big 12 denies the remaining allegations of Paragraph 115.

24 116. The Big 12 denies the allegations of Paragraph 116.

25 117. The Big 12 denies the allegations of Paragraph 117.

26 118. The Big 12 lacks sufficient knowledge or information to form a belief as to  
27 the truth of the allegations in Paragraph 118 concerning the policies that various  
28 educational institutions may have relating to students other than student-athletes and

1 concerning alleged comments of Brian Freeman, CEO of HeartBeat, and therefore denies  
2 them. The Big 12 denies the remaining allegations of Paragraph 118.

3 119. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations included in Paragraph 119 concerning the practices of various  
5 educational institutions relating to students other than student-athletes, and concerning a  
6 YouTube channel at Colorado State University, and therefore denies them. The Big 12  
7 denies the remaining allegations of Paragraph 119.

8 120. The Big 12 admits that NCAA rules include limitations on compensation to  
9 student-athletes, including for the alleged use of their names, images, and likenesses. The  
10 Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
11 allegations included in Paragraph 120 concerning Breana Dodd and therefore denies  
12 them. The Big 12 denies the remaining allegations of Paragraph 120.

13 121. The Big 12 lacks sufficient knowledge or information to form a belief as to  
14 the allegations included in Paragraph 121 concerning alleged comments of Mark Emmert  
15 and therefore denies them. The Big 12 denies the remaining allegations of Paragraph 121.

16 122. The Big 12 denies the allegations of Paragraph 122.

17 123. Upon information and belief, the Big 12 admits that former NCAA Executive  
18 Director Walter Byers authored a book titled Unsportsmanlike Conduct: Exploiting  
19 College Athletes, published in 1995. The Big 12 lacks sufficient knowledge or information  
20 to form a belief as to the truth of the remaining allegations of Paragraph 123 and therefore  
21 denies them.

22 124. The Big 12 lacks sufficient knowledge or information to form a belief as to  
23 the truth of the allegations in Paragraph 124 concerning any alleged website content and  
24 regarding reported statements made about or by the NCAA and therefore denies them.  
25 The Big 12 denies the remaining allegations of Paragraph 124.

26 125. The Big 12 lacks sufficient knowledge or information to form a belief as to  
27 the truth of the allegations in Paragraph 125 and therefore denies them.  
28

1           126. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations in Paragraph 126 and therefore denies them.

3           127. The Big 12 admits that Article I of the NCAA Constitution contains the  
4 language quoted in Paragraph 127.

5           128. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations in Paragraph 128 and therefore denies them.

7           129. The Big 12 admits that the NCAA is a voluntary organization. The Big 12  
8 lacks sufficient knowledge or information to form a belief as to the truth of the remaining  
9 allegations of Paragraph 129 and therefore denies them.

10          130. The Big 12 lacks sufficient knowledge or information to form a belief as to  
11 the truth of the allegations in Paragraph 130 and therefore denies them.

12          131. The Big 12 admits that the NCAA Manual contains the provisions quoted in  
13 part from NCAA Constitution Article 3.02.3 in Paragraph 131. The Big 12 lacks sufficient  
14 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
15 131 and therefore denies them.

16          132. The Big 12 lacks sufficient knowledge or information to form a belief as to  
17 the truth of the allegations in Paragraph 132 and therefore denies them.

18          133. The Big 12 admits that the NCAA legislative system involves boards,  
19 councils, and numerous committees, groups, and structures. The Big 12 lacks sufficient  
20 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
21 133 concerning reported comments made by the NCAA and therefore denies them. The  
22 Big 12 denies the remaining allegations of Paragraph 133.

23          134. The Big 12 admits that the NCAA and its members have adopted a  
24 Constitution and Bylaws as set forth in the NCAA Manual, which is published annually  
25 and updated periodically. The Big 12 denies the remaining allegations of Paragraph 134.

26          135. The Big 12 admits that the method of adoption of NCAA rules and  
27 amendments thereto is set forth in the NCAA Manual. The Big 12 further admits that the  
28

1 NCAA Manual contains the provisions quoted in part from NCAA Bylaw 5.2.2 in  
2 Paragraph 135. The Big 12 denies the remaining allegations of Paragraph 135.

3 136. The Big 12 admits that the NCAA Manual sets forth the NCAA rules. The  
4 Big 12 further admits that the NCAA Manual contains the provisions quoted in part from  
5 Article 1.3.2 and Article 2.8.1 in Paragraph 136. The Big 12 denies the remaining  
6 allegations of Paragraph 136.

7 137. The Big 12 admits that the NCAA Manual sets forth the NCAA rules, subject  
8 to the changes in application effected by the Interim NIL Policy, other NCAA guidance  
9 and interpretations, and state laws. The Big 12 further admits that the NCAA Manual  
10 contains the provisions quoted in part from Article 3.1 and Article 3.2.1.2 in Paragraph  
11 137. The Big 12 denies the remaining allegations of Paragraph 137.

12 138. The Big 12 admits that the NCAA Manual sets forth the NCAA rules, subject  
13 to the changes in application effected by the Interim NIL Policy, other NCAA guidance  
14 and interpretations, and state laws. The Big 12 further admits that the NCAA Manual  
15 contains the provisions quoted in part from Article 3.2.4 and Article 3.2.4.4 in Paragraph  
16 138. The Big 12 specifically denies that it has engaged in price-fixing activity. The Big 12  
17 denies the remaining allegations of Paragraph 138.

18 139. The Big 12 admits that the NCAA Manual sets forth the NCAA rules, subject  
19 to the changes in application effected by the Interim NIL Policy, other NCAA guidance  
20 and interpretations, and state laws. The Big 12 specifically denies that it has engaged in  
21 price-fixing activity. The Big 12 denies the remaining allegations of Paragraph 139.

22 140. The Big 12 admits that the NCAA Manual sets forth the NCAA rules, subject  
23 to the changes in application effected by the Interim NIL Policy, other NCAA guidance  
24 and interpretations, and state laws. The Big 12 further admits that the NCAA Manual  
25 contains the provisions quoted in part from Articles 2.8.3, 3.2.5.1, 3.01.4, and 3.2.5.1.1 in  
26 Paragraph 140. The Big 12 denies the remaining allegations of Paragraph 140.

27 141. The Big 12 admits that certain member conferences may assist with  
28 compliance with NCAA rules. The Big 12 lacks sufficient knowledge or information to



1 form a belief as to the truth of the allegations included in Paragraph 141 concerning the  
2 Pac-12 handbook and the statements therein and therefore denies them. The Big 12 denies  
3 the remaining allegations of Paragraph 141.

4 142. The Big 12 admits that the NCAA Manual sets forth the NCAA rules,  
5 subject to the changes in application effected by the Interim NIL Policy, other NCAA  
6 guidance and interpretations, and state laws. The Big 12 further admits that the NCAA  
7 Manual contains the provisions quoted in part from Bylaw 14.01.3 in Paragraph 142. The  
8 Big 12 denies the remaining allegations of Paragraph 142.

9 143. The Big 12 denies the allegations of Paragraph 143.

10 144. The Big 12 lacks sufficient knowledge or information to form a belief as to  
11 the truth of the allegations in Paragraph 144 concerning alleged comments of Mark Lewis  
12 and therefore denies them. The Big 12 denies the remaining allegations of Paragraph 144.

13 145. The Big 12 admits that a small minority of NCAA Division I athletic  
14 departments generate positive net revenues after the expenses incurred by the institutions  
15 are offset against revenue generated by institutions and distributed to the institutions by  
16 the NCAA and conferences. The Big 12 lacks sufficient knowledge or information to form  
17 a belief as to the truth of the allegations in Paragraph 145 concerning alleged revenue of  
18 the NCAA, other conferences, and individual athletic programs and therefore denies  
19 them. The Big 12 denies the remaining allegations of Paragraph 145.

20 146. The Big 12 denies the allegations of Paragraph 146.

21 147. The Big 12 admits that it is party to broadcasting agreements. The Big 12  
22 further admits that in 2016 the NCAA announced a new eight-year agreement with CBS  
23 and Turner Sports for the rights to broadcast the NCAA Division I basketball tournament  
24 on television and that the license fee has been publicly reported to be approximately \$8.8  
25 billion over the eight-year term of the agreement. The Big 12 further admits that the  
26 NCAA distributes net revenues from the broadcast licenses to its members. The Big 12  
27 lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
28 in Paragraph 147 concerning alleged terms of broadcast licensing agreements of other

1 entities and therefore denies them. The Big 12 denies the remaining allegations of  
2 Paragraph 147.

3 148. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations in Paragraph 148 concerning alleged advertising revenue at  
5 various events and therefore denies them. The Big 12 denies the remaining allegations of  
6 Paragraph 148.

7 149. The Big 12 admits that it is party to and/or receives revenue from certain  
8 sponsorship agreements. Upon information and belief, the Big 12 further admits that the  
9 NCAA, other conferences, and NCAA member institutions are parties to certain  
10 sponsorship agreements. The Big 12 denies the remaining allegations of Paragraph 149.

11 150. The Big 12 admits that Senator Murphy published a report with certain  
12 statements as set forth in Paragraph 150. The Big 12 lacks sufficient knowledge or  
13 information to form a belief as to the truth of the allegations in Paragraph 150 concerning  
14 alleged NCAA contractual agreements and therefore denies them. The Big 12 denies the  
15 remaining allegations of Paragraph 150.

16 151. Upon information and belief, the Big 12 admits that some NCAA member  
17 institutions have contracts with apparel companies. The Big 12 lacks sufficient knowledge  
18 or information to form a belief as to the truth of the allegations in Paragraph 151  
19 concerning specifics of alleged apparel agreements and therefore denies them. The Big 12  
20 denies the remaining allegations of Paragraph 151.

21 152. The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations in Paragraph 152 concerning alleged apparel agreements and  
23 therefore denies them. The Big 12 denies the remaining allegations of Paragraph 152.

24 153. The Big 12 lacks sufficient knowledge or information to form a belief as to  
25 the truth of the allegations in Paragraph 153 concerning alleged apparel agreements and  
26 therefore denies them. The Big 12 denies the remaining allegations of Paragraph 153.

27 154. Upon information and belief, the Big 12 admits that apparel companies,  
28 through involvement in AAU basketball, might influence the selection of colleges by some

1 high school students. The Big 12 lacks sufficient knowledge or information to form a belief  
2 as to the truth of the allegations in Paragraph 154 concerning the AAU and alleged apparel  
3 agreements and therefore denies them. The Big 12 denies the remaining allegations of  
4 Paragraph 154.

5 155. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations in Paragraph 155 concerning the percentage of prospects who  
7 attend a college or remain affiliated with merchandise brands in the NBA and therefore  
8 denies them. The Big 12 denies the remaining allegations of Paragraph 155.

9 156. The Big 12 lacks sufficient knowledge or information to form a belief as to  
10 the truth of the allegations in Paragraph 156 concerning alleged actions and comments of  
11 Sabrina Ionescu and therefore denies them. The Big 12 denies the remaining allegations  
12 of Paragraph 156.

13 157. The Big 12 lacks sufficient knowledge or information to form a belief as to  
14 the truth of the allegations in Paragraph 157 concerning alleged apparel agreements and  
15 alleged comments of Rick Pitino and therefore denies them. The Big 12 denies the  
16 remaining allegations of Paragraph 157.

17 158. The Big 12 admits that in 2017 the FBI announced the results of an  
18 investigation into certain identified issues and persons relating to college basketball, that  
19 complaints were filed, and that certain persons were indicted. The Big 12 denies the  
20 remaining allegations of Paragraph 158.

21 159. The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations in Paragraph 159 concerning alleged comments of Sonny  
23 Vaccaro and therefore denies them. The Big 12 denies the remaining allegations of  
24 Paragraph 159.

25 160. Upon information and belief, the Big 12 admits that certain NCAA member  
26 institutions are parties to certain social media agreements. The Big 12 lacks sufficient  
27 knowledge or information to form a belief as to the truth of the remaining allegations in  
28 Paragraph 160 and therefore denies them.

1           161. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations in Paragraph 161 concerning the University of Southern  
3 California and alleged comments of unidentified persons at Fox Sports and therefore  
4 denies them. The Big 12 denies the remaining allegations of Paragraph 161.

5           162. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations in Paragraph 162 concerning alleged social media agreements  
7 and therefore denies them. The Big 12 denies the remaining allegations of Paragraph 162.

8           163. The Big 12 admits that it is a party to and/or receives revenue from certain  
9 sponsorship agreements. Upon information and belief, the Big 12 admits that the NCAA,  
10 other conferences, and NCAA member institutions are parties to certain sponsorship  
11 agreements. The Big 12 lacks sufficient knowledge or information to form a belief as to the  
12 truth of the allegations of Paragraph 163 and therefore denies them.

13           164. Upon information and belief, the Big 12 admits that Division I members  
14 invest funds for a variety of purposes, including, but not limited to, coaching contracts  
15 (which in many instances provide superior coaching for the benefit of student-athletes)  
16 and playing, training, and other facilities, which are beneficial and desirable to student-  
17 athletes. The Big 12 denies the remaining allegations of Paragraph 164.

18           165. The Big 12 admits that institutions invest in facilities for various purposes,  
19 including, but not limited to, playing and training, and that those facilities have attributes  
20 which are beneficial and desirable to student-athletes. The Big 12 lacks sufficient  
21 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
22 165 regarding facilities at Clemson and South Carolina and therefore denies them. The Big  
23 12 denies the remaining allegations of Paragraph 165.

24           166. The Big 12 admits that NCAA member institutions pay the salaries and  
25 benefits of their administrators and coaches. The Big 12 lacks sufficient knowledge or  
26 information to form a belief as to the truth of the allegations in Paragraph 166 concerning  
27 the alleged salary information of coaches and administrators and therefore denies them.  
28 The Big 12 denies the remaining allegations of Paragraph 166.

1           167. Upon information and belief, the Big 12 admits that NCAA member  
2 institutions pay the salaries and benefits of their administrators and coaches. The Big 12  
3 lacks sufficient knowledge or information to form a belief as to the truth of the allegations  
4 in Paragraph 167 concerning alleged salary, benefit, and endorsement information of the  
5 identified individuals and therefore denies them. The Big 12 denies the remaining  
6 allegations of Paragraph 167.

7           168. Upon information and belief, the Big 12 admits that some coaches enter  
8 commercial agreements with various entities. The Big 12 denies the remaining allegations  
9 of Paragraph 168.

10          169. The Big 12 lacks sufficient knowledge or information to form a belief as to  
11 the truth of the allegations in Paragraph 169 and therefore denies them.

12          170. The Big 12 lacks sufficient knowledge or information to form a belief as to  
13 the truth of the allegations in Paragraph 170 and therefore denies them.

14          171. The Big 12 lacks sufficient knowledge or information to form a belief as to  
15 the truth of the allegations in Paragraph 171 and therefore denies them.

16          172. The Big 12 admits that NCAA rules include limitations on compensation to  
17 student-athletes and that coaches are not subject to the student-athlete compensation  
18 rules. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth  
19 of the allegations in Paragraph 172 concerning Dabo Swinney and therefore denies them.  
20 The Big 12 denies the remaining allegations of Paragraph 172.

21          173. The Big 12 admits that NCAA rules include limitations on compensation to  
22 student-athletes. The Big 12 lacks sufficient knowledge or information to form a belief as  
23 to the truth of the allegations included in Paragraph 173 concerning offers allegedly made  
24 to student-athletes and therefore denies them. The Big 12 denies the remaining allegations  
25 of Paragraph 173.

26          174. The Big 12 admits that NCAA rules include limitations on compensation to  
27 student-athletes. The Big 12 lacks sufficient knowledge or information to form a belief as  
28 to the truth of the allegations included in Paragraph 174 concerning alleged reporting of

1 ESPN and alleged comments of Kevin Lennon and therefore denies them. The Big 12  
2 denies the remaining allegations of Paragraph 174.

3 175. The Big 12 denies the allegations of Paragraph 175.

4 176. Upon information and belief, the Big 12 admits that EA Sports produced  
5 video games utilizing collegiate marks under licensing agreement with the NCAA until  
6 2014. The Big 12 further admits that a lawsuit was brought by Sam Keller against EA and  
7 the NCAA related to those games. The Big 12 lacks sufficient knowledge or information  
8 to form a belief as to the truth of the remaining allegations in Paragraph 176 and therefore  
9 denies them.

10 177. The Big 12 lacks sufficient knowledge or information to form a belief as to  
11 the truth of the allegations of Paragraph 177 and therefore denies them.

12 178. The Big 12 denies the allegations of Paragraph 178.

13 179. The Big 12 denies the allegations of Paragraph 179.

14 180. The Big 12 admits that the United States Supreme Court issued its opinion  
15 in *NCAA v. Board of Regents* in 1984. The Big 12 further admits that a small number of  
16 NCAA Division I athletic departments generate positive net revenues and that there is  
17 consumer demand for collegiate sports. The Big 12 denies the remaining allegations of  
18 Paragraph 180.

19 181. The Big 12 admits that the United States Court of Appeals for the Tenth  
20 Circuit decided *Law v. NCAA*. The Big 12 further admits that there is consumer demand  
21 for collegiate sports. The Big 12 lacks sufficient knowledge or information to form a belief  
22 as to the truth of the allegations in Paragraph 181 concerning alleged salaries of assistant  
23 coaches and therefore denies them. The Big 12 denies the remaining allegations of  
24 Paragraph 181.

25 182. The Big 12 denies Plaintiffs' characterization of the filings in *White v. NCAA*.  
26 The Big 12 admits that there is consumer demand for collegiate sports and that COA  
27 grants-in-aid have been permitted and granted since 2015. The Big 12 denies the  
28 remaining allegations of Paragraph 182.

1           183. The Big 12 denies Plaintiffs' characterization of the opinions issued by this  
2 Court and the United States Court of Appeals for the Ninth Circuit in *O'Bannon v. NCAA*  
3 and *In re NCAA Athletic Grant-in-Aid Antitrust Litigation*. The Big 12 admits that there is  
4 consumer demand for collegiate sports and that COA grants-in-aid have been permitted  
5 and granted since 2015. The Big 12 denies the remaining allegations of Paragraph 183.

6           184. The Big 12 admits that the United States Court of Appeals for the Ninth  
7 Circuit issued an opinion in *In re NCAA Athletic Grant-in-Aid Antitrust Litigation* on May  
8 18, 2020. The Big 12 denies the remaining allegations of Paragraph 184.

9           185. The Big 12 admits that the language quoted in Paragraph 185 appears in the  
10 Ninth Circuit's decision in *In re NCAA Athletic Grant-in-Aid Antitrust Litigation*. The Big 12  
11 denies the remaining allegations of Paragraph 185.

12           186. The Big 12 admits that the opinion in *NCAA v. Alston*, 141 S. Ct. 2141 (2021),  
13 was issued on June 21, 2021. The Big 12 denies the remaining allegations of Paragraph 186.

14           187. The Big 12 admits that on June 24, 2021 this Court issued its ruling on  
15 Defendants' Motion to Dismiss Plaintiffs' initial complaint in this action. The Big 12 denies  
16 the remaining allegations of Paragraph 187.

17           188. Upon information and belief, the Big 12 admits that several state laws and  
18 executive orders relating to student-athlete NIL went into effect on or about July 1, 2021.  
19 The Big 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
20 allegations in Paragraph 188 concerning the specific contents of the legislation or  
21 executive orders in effect as of July 1, 2021 and therefore denies them. The Big 12 denies  
22 the remaining allegations of Paragraph 188.

23           189. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
24 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
25 executive orders addressing NIL were effective or soon to be effective), with the result  
26 that certain activities relating to name, image, and likeness would not be impacted by the  
27 application of certain NCAA bylaws. The Big 12 denies the remaining allegations of  
28 paragraph 189.



1           190. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
2 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
3 executive orders addressing NIL were effective or soon to be effective), with the result  
4 that certain activities relating to name, image, and likeness would not be impacted by the  
5 application of certain NCAA bylaws. Upon information and belief, the Big 12 further  
6 admits that there have been unverified media reports that certain student-athletes in some  
7 sports have been offered and/or have accepted compensation for the alleged use of their  
8 names, images, and likenesses following the passage of state NIL laws and issuance of the  
9 Interim NIL Policy. The Big 12 lacks sufficient knowledge or information to form a belief  
10 as to the truth of the allegations in Paragraph 190 concerning the alleged comments of  
11 Mark Emmert, Mike Bobinski, and unidentified representatives of Defendants and  
12 therefore denies them. The Big 12 admits that Bob Bowlsby was quoted in the article cited  
13 in footnote 114. The Big 12 denies the remaining allegations of Paragraph 190.

14           191. The Big 12 denies the allegations of Paragraph 191.

15           192. The Big 12 denies the allegations of Paragraph 192.

16           193. The Big 12 admits that Defendants' procompetitive benefits in past litigation  
17 have included, among other things, consumer demand for collegiate sports. The Big 12  
18 denies the remaining allegations of Paragraph 193.

19           194. The Big 12 admits that that the opinion of the United States Court of Appeals  
20 for the Ninth Circuit in the *NCAA GIA* litigation contains the language quoted in  
21 Paragraph 194. The Big 12 denies the remaining allegations of Paragraph 194.

22           195. The Big 12 admits that the opinion issued by the United States District Court  
23 for the Northern District of California in *In re NCAA Athletic Grant-in-Aid Antitrust*  
24 *Litigation* contains the language quoted in Paragraph 195. The Big 12 denies the remaining  
25 allegations of Paragraph 195.

26           196. The Big 12 denies the allegations of Paragraph 196.

27           197. The Big 12 lacks sufficient knowledge or information to form a belief as to  
28 the truth of the allegations in Paragraph 197 concerning alleged unattributed surveys and

1 therefore denies them. The Big 12 specifically denies that it has engaged in any unlawful  
2 or anticompetitive conduct. The Big 12 denies the remaining allegations of Paragraph 197.

3 198. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations the allegations of Paragraph 198 and therefore denies them.

5 199. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations of Paragraph 199 and therefore denies them.

7 200. The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in Paragraph 200 concerning alleged polling and what such  
9 polls might indicate and therefore denies them. The Big 12 denies the remaining  
10 allegations of Paragraph 200.

11 201. The Big 12 admits that the opinion issued by the United States Court of  
12 Appeals for the Ninth Circuit in the *NCAA GIA* litigation contains the language quoted in  
13 Paragraph 201. The Big 12 denies the remaining allegations of Paragraph 201.

14 202. The Big 12 admits that the NCAA issued a Final Report and  
15 Recommendations on April 17, 2020 that contains the language quoted in Paragraph 202.  
16 The Big 12 denies the remaining allegations of Paragraph 202.

17 203. The Big 12 admits that NCAA rules include limitations on compensation to  
18 student-athletes, and that there are provisions in the rules allowing for limited, non-  
19 monetary athletic participation mementos and awards, pre-matriculation tennis awards,  
20 and awards presented by Olympic governing bodies to the few student-athletes who  
21 compete in the Olympics. Upon information and belief, the Big 12 further admits that  
22 some Division I members have used Student Assistance Funds to purchase loss-of-value  
23 insurance policies to enable student-athletes to remain in college and compete in collegiate  
24 athletics. The Big 12 denies the remaining allegations of Paragraph 203.

25 204. The Big 12 admits that the opinion issued by the United States Court of  
26 Appeals for the Ninth Circuit in the *NCAA GIA* litigation contains the language quoted in  
27 Paragraph 204. The Big 12 denies the remaining allegations of Paragraph 204.

1           205. The Big 12 admits that the NCAA has sought to expand benefits available to  
2 student-athletes within its conception, and consistent with the collegiate model. The Big  
3 12 further admits that the NCAA began allowing full COA athletic grants-in-aid in 2015,  
4 which naturally increased the number of student-athletes who might receive above-COA  
5 total assistance. The Big 12 further admits that consumers demand collegiate sports and  
6 that a minority of college football and basketball programs generate positive net revenues.  
7 The Big 12 denies the remaining allegations of Paragraph 205.

8           206. The Big 12 lacks knowledge, information, or belief sufficient to admit or  
9 deny the allegations included in Paragraph 206 concerning alleged amounts received by  
10 certain individuals, including Kyler Murray, and therefore denies them. The Big 12 admits  
11 there is consumer demand for collegiate sports. The Big 12 denies the remaining  
12 allegations of Paragraph 206.

13           207. The Big 12 admits that Plaintiffs do not purport to challenge NCAA rules  
14 requiring student-athletes to be enrolled in their institutions and to meet academic  
15 eligibility standards. The Big 12 further admits that recently enacted state statutes, some  
16 of which became effective July 1, 2021, may require that institutions offer certain  
17 educational resources and services to student-athletes relating to name, image, and  
18 likeness, and that some NCAA member institutions have offered such educational  
19 resources and services. The Big 12 lacks sufficient knowledge or information to form a  
20 belief as to the truth of the remaining allegations of Paragraph 207 and therefore denies  
21 them.

22           208. The Big 12 admits that there is a trial record and that the District Court and  
23 the United States Court of Appeals for the Ninth Circuit in the *NCAA GIA* litigation issued  
24 opinions. The Big 12 denies the remaining allegations of Paragraph 208.

25           209. The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations in Paragraph 209 concerning alleged comments by unidentified  
27 critics and therefore denies them. The Big 12 admits that in 2017 the FBI announced the  
28 results of an investigation into certain identified issues and persons relating to college

1 basketball, that the FBI filed complaints, and that certain persons were indicted. The Big  
2 12 denies the remaining allegations of Paragraph 209.

3 210. The Big 12 admits that the NCAA issued an Interim NIL Policy effective July  
4 1, 2021 (the date that certain state laws and executive orders addressing NIL were effective  
5 or soon to be effective), with the result that certain activities relating to name, image, and  
6 likeness would not be impacted by the application of certain NCAA bylaws. Upon  
7 information and belief, the Big 12 further admits that there have been unverified media  
8 reports that certain student-athletes at some schools and in some sports have been offered  
9 and/or accepted compensation for the alleged use of their names, images, and likenesses  
10 following the passage of state NIL laws and issuance of the Interim NIL Policy. The Big  
11 12 lacks sufficient knowledge or information to form a belief as to the truth of the  
12 allegations in Paragraph 210 concerning alleged evidence of the interests of consumers  
13 and sponsors and therefore denies them. The Big 12 denies the remaining allegations of  
14 Paragraph 210.

15 211. The Big 12 lacks sufficient knowledge or information to form a belief as to  
16 the truth of the allegations in Paragraph 211 concerning alleged comments of Mark  
17 Emmert. The Big 12 admits that the NCAA issued an Interim NIL Policy (along with  
18 accompanying materials) effective July 1, 2021 (the date that certain state laws and  
19 executive orders addressing NIL were effective or soon to be effective), with the result  
20 that certain activities relating to name, image, and likeness would not be impacted by the  
21 application of certain NCAA bylaws. The Big 12 admits that the opinion issued by the  
22 United States Court of Appeals for the Ninth Circuit in *O'Bannon v. NCAA* contains the  
23 language quoted in Paragraph 211. The Big 12 denies that the purported less restrictive  
24 alternatives proffered in Paragraph 211 would be appropriate or legally justified. The Big  
25 12 denies the remaining allegations of Paragraph 211.

26 212. The allegations of Paragraph 212 call for legal conclusions to which no  
27 response is required. To the extent a response is required, the Big 12 denies the allegations  
28 of Paragraph 212.

1           213. The Big 12 admits that integration of student-athletes is a procompetitive  
2 justification for various rules that have been challenged in litigation. The Big 12 lacks  
3 sufficient knowledge or information to form a belief as to the truth of the allegations  
4 included in Paragraph 213 concerning alleged comments by unidentified NCAA  
5 personnel and therefore denies them. The Big 12 denies the remaining allegations of  
6 Paragraph 213.

7           214. The Big 12 denies the allegations of Paragraph 214.

8           215. The Big 12 admits that the opinion issued by the United States Court of  
9 Appeals for the Ninth Circuit in *O'Bannon v. NCAA* contains the language quoted in  
10 Paragraph 215. The Big 12 denies the remaining allegations of Paragraph 215.

11           216. Upon information and belief, the Big 12 admits that students at college  
12 campuses have varying access to income or wealth. The Big 12 lacks sufficient knowledge  
13 or information to form a belief as to the truth of the allegations included in Paragraph 216  
14 concerning the alleged impact on wealthier students and therefore denies them. The Big  
15 12 denies the remaining allegations of Paragraph 216.

16           217. Upon information and belief, the Big 12 admits that some college students  
17 in America are employed and compensated. The Big 12 lacks sufficient knowledge or  
18 information to form a belief as to the truth of the remaining allegations of Paragraph 217  
19 and therefore denies them.

20           218. The Big 12 admits that the opinions issued by the District Court and the  
21 United States Court of Appeals for the Ninth Circuit in the *NCAA GIA* litigation contain  
22 the language quoted in Paragraph 218. The Big 12 denies the allegations of Paragraph 218.

23           219. The Big 12 admits that NCAA rules contain limitations on compensation to  
24 student-athletes for the alleged use of their names, images, and likenesses. The Big 12  
25 further admits that the NCAA issued a Final Report and Recommendations on April 17,  
26 2020 that contains substantially the language quoted in Paragraph 219. The Big 12 lacks  
27 sufficient knowledge or information to form a belief as to the truth of the allegations in  
28 Paragraph 219 concerning the policies that various educational institutions may have

1 relating to students other than student-athletes and therefore denies them. The Big 12  
2 denies the remaining allegations of Paragraph 219.

3 220. The Big 12 admits that Plaintiffs do not purport to challenge NCAA rules  
4 requiring student-athletes to be enrolled in their institutions and to meet academic  
5 eligibility standards. The Big 12 further admits that recently enacted state statutes, some  
6 of which became effective July 1, 2021, may require that institutions offer certain  
7 educational resources and services to student-athletes relating to name, image, and  
8 likeness, and that some NCAA member institutions have offered such educational  
9 resources and services. The Big 12 lacks sufficient knowledge or information to form a  
10 belief as to the truth of the allegations of Paragraph 220 and therefore denies them.

11 221. The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations of Paragraph 221 and therefore denies them.

13 222. The Big 12 denies the allegations of Paragraph 222.

14 223. The Big 12 denies the allegations of Paragraph 223.

15 224. The Big 12 lacks sufficient knowledge or information to form a belief as to  
16 the truth of the allegations in Paragraph 224 concerning the alleged comments of John  
17 Shoop and therefore denies them. The Big 12 denies the remaining allegations of  
18 Paragraph 224.

19 225. The Big 12 admits that NCAA rules include limitations on compensation to  
20 student-athletes for the alleged use of their names, images, and likenesses, which  
21 limitations have recently been altered by state laws and by the NCAA's Interim Guidance.  
22 The Big 12 denies the remaining allegations of Paragraph 225.

23 226. The Big 12 denies the allegations of Paragraph 226.

24 227. The Big 12 denies the allegations of Paragraph 227.

25 228. The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations of Paragraph 228 and therefore denies them.

27 229. The Big 12 lacks sufficient knowledge or information to form a belief as to  
28 the truth of the allegations of Paragraph 229 and therefore denies them.

1           230. Upon information and belief, the Big 12 admits that the NCAA's largest  
2 source of revenue is derived from media rights and attendance related to the NCAA  
3 Division I basketball tournament, and that the NCAA distributes a large portion of those  
4 funds to member institutions. The Big 12 denies the remaining allegations of Paragraph  
5 230.

6           231. The Big 12 admits that the NCAA makes payments to schools, which fund  
7 certain men's and women's sports. The Big 12 denies the allegations in Paragraph 231  
8 characterizing the alleged financial value associated with or derived from women's  
9 basketball, television viewership, and attendance. The Big 12 denies that the NCAA makes  
10 any payments to either men's teams or women's teams. The Big 12 denies the remaining  
11 allegations of Paragraph 231.

12           232. Upon information and belief, the Big 12 admits that there have been  
13 unverified media reports that some administrators, legislators, and members of the public  
14 support various concepts of student-athletes having the opportunity to seek  
15 compensation for the use of NIL. The Big 12 denies the remaining allegations of Paragraph  
16 232.

17           233. The Big 12 admits that California has passed the Fair Pay to Play Act ("SB  
18 206"), set to take effect in 2023, and that other states have introduced legislation relating  
19 to NIL. The Big 12 lacks sufficient knowledge or information to form a belief as to the truth  
20 of the allegations in Paragraph 233 concerning efforts to change the effective date of SB  
21 206 and therefore denies them. The Big 12 denies the remaining allegations of Paragraph  
22 233.

23           234. The Big 12 admits that SB 206 permits certain NIL compensation or benefits  
24 as provided in the statute. The Big 12 lacks sufficient knowledge or information to form a  
25 belief as to the truth of the allegations in Paragraph 234 concerning the future effects of SB  
26 206 and therefore denies them. The Big 12 denies the remaining allegations of Paragraph  
27 234.



1           235. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 235 and therefore denies them.

3           236. The Big 12 admits that several states have considered or passed legislation  
4 relating to student-athletes and NIL. The Big 12 lacks sufficient knowledge or information  
5 to form a belief as to the truth of the allegations of Paragraph 236 and therefore denies  
6 them.

7           237. Upon information and belief, the Big 12 admits that the NCAA opposed  
8 certain aspects of SB 206 and communicated certain concerns to Governor Newsom  
9 regarding certain aspects. The Big 12 lacks sufficient knowledge or information to form a  
10 belief as to the truth of the allegations of Paragraph 237 and therefore denies them.

11           238. The Big 12 denies the allegations of Paragraph 238.

12           239. The Big 12 admits unverified media sources report that the NCAA and some  
13 NCAA members have made public comments regarding possible revision of NCAA NIL  
14 rules and considerations relating to any such revisions. The Big 12 further admits that the  
15 NCAA and certain of its working groups have studied, issued statements regarding, and  
16 drafted proposed rules for consideration related to NIL in 2019 and 2020. The Big 12  
17 admits that the defendants did not prevail in the United States Supreme Court opinion in  
18 *Alston* and that this Court issued a ruling denying Defendants' Motion to Dismiss  
19 Plaintiffs' initial complaint. The Big 12 further admits that the NCAA issued an Interim  
20 NIL Policy (along with accompanying materials) effective July 1, 2021 (the date that  
21 certain state laws and executive orders addressing NIL were effective or soon to be  
22 effective), with the result that certain activities relating to name, image, and likeness  
23 would not be impacted by the application of certain NCAA bylaws. The Big 12 denies the  
24 remaining allegations of Paragraph 239.

25           240. The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations of Paragraph 240 and therefore denies them.

27           241. The Big 12 lacks sufficient knowledge or information to form a belief as to  
28 the truth of the allegations of Paragraph 241 and therefore denies them.

1           242. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 242 and therefore denies them.

3           243. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations in Paragraph 243 concerning the alleged comments of Warde  
5 Manuel and therefore denies them. The Big 12 denies the remaining allegations of  
6 Paragraph 243.

7           244. The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in Paragraph 244 concerning the alleged comments of Jack  
9 Swarbrick and therefore denies them. The Big 12 denies the remaining allegations of  
10 Paragraph 244.

11           245. The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations in Paragraph 245 concerning the alleged comments of Kyle  
13 Kallander and therefore denies them. The Big 12 denies the remaining allegations of  
14 Paragraph 245.

15           246. The Big 12 admits that there have been unverified media reports that the  
16 NCAA and some NCAA members have made public comments regarding possible  
17 revision of NCAA rules and considerations relating to any such revisions. The Big 12 lacks  
18 sufficient knowledge or information to form a belief as to the truth of the allegations in  
19 Paragraph 246 concerning the alleged comments of Scott Frost and Garrett Klessy and  
20 therefore denies them. The Big 12 denies the remaining allegations of Paragraph 246.

21           247. The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations in Paragraph 247 concerning the alleged comments of Jim  
23 Harbaugh and alleged revenues of the University of Michigan and therefore denies them.  
24 The Big 12 denies the remaining allegations of Paragraph 247.

25           248. The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations in Paragraph 248 concerning the alleged comments of Chris  
27 Holtmann and therefore denies them. The Big 12 denies the remaining allegations of  
28 Paragraph 248.

1           249. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 249 and therefore denies them.

3           250. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations of Paragraph 250 and therefore denies them.

5           251. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations of Paragraph 251 and therefore denies them.

7           252. The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in Paragraph 252 concerning the alleged comments of Kristin  
9 Williams and therefore denies them. The Big 12 denies the remaining allegations of  
10 Paragraph 252.

11           253. The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations in Paragraph 253 concerning the alleged comments of Kyle  
13 Kallander and therefore denies them. The Big 12 denies the remaining allegations of  
14 Paragraph 253.

15           254. The Big 12 lacks sufficient knowledge or information to form a belief as to  
16 the truth of the allegations of Paragraph 254 and therefore denies them.

17           255. The Big 12 admits that the NCAA issued a Report of the NCAA Board of  
18 Governors on October 29, 2019 that contains the language quoted in Paragraph 255. The  
19 Big 12 denies the remaining allegations of Paragraph 255.

20           256. The Big 12 admits that the NCAA issued a Report of the NCAA Board of  
21 Governors on October 29, 2019 that contains the language quoted in Paragraph 256. The  
22 Big 12 denies the remaining allegations of Paragraph 256.

23           257. The Big 12 admits that the NCAA issued a Final Report and  
24 Recommendations on April 17, 2020 that contains substantially the language quoted in  
25 Paragraph 257. The Big 12 denies the remaining allegations of Paragraph 257.

26           258. The Big 12 admits that the NCAA issued a Final Report and  
27 Recommendations on April 17, 2020 that contains the language quoted in the last sentence  
28 of Paragraph 258. The Big 12 denies the remaining allegations of Paragraph 258.

1           259. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations in Paragraph 259 concerning the alleged comments of the  
3 NCAA and therefore denies them. The Big 12 denies the remaining allegations of  
4 Paragraph 259.

5           260. The Big 12 admits that the NCAA issued a Final Report and  
6 Recommendations on April 17, 2020 that contains substantially the language quoted in  
7 Paragraph 260. The Big 12 further admits that the NCAA sought proposals from the three  
8 divisions. The Big 12 denies the remaining allegations of Paragraph 260.

9           261. The Big 12 admits that the NCAA issued a Final Report and  
10 Recommendations on April 17, 2020 that contains the language quoted in part in  
11 Paragraph 261. The Big 12 denies the remaining allegations of Paragraph 261.

12           262. The Big 12 lacks sufficient knowledge or information to form a belief as to  
13 the truth of the allegations in Paragraph 262 concerning the alleged comments of the  
14 Associated Press and alleged expenditures of other entities and therefore denies them.

15           263. The Big 12 admits that the conferences that are parties to this action sent a  
16 letter to congressional leaders on May 23, 2020 regarding potential federal NIL legislation.  
17 The Big 12 denies the remaining allegations of Paragraph 263.

18           264. The Big 12 admits that the NCAA and certain of its working groups have  
19 studied, issued statements regarding, and drafted proposed rules for consideration  
20 related to NIL in 2019 and 2020. The Big 12 further admits that in or about January 2021  
21 the United States Department of Justice sent the NCAA a letter. The Big 12 denies the  
22 remaining allegations of Paragraph 264.

23           265. The Big 12 admits that there have been unverified media reports that the  
24 NCAA and some NCAA members have made public comments regarding possible  
25 revision of NCAA NIL rules and considerations relating to any such revisions. Upon  
26 information and belief, the Big 12 further admits that Rebecca Blank testified before the  
27 Senate Committee on Health, Education, Labor & Pensions in 2020. The Big 12 lacks  
28

1 sufficient knowledge or information to form a belief as to the truth of the allegations of  
2 Paragraph 265 and therefore denies them.

3 266. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations in Paragraph 266 concerning the alleged comments of Allen  
5 Greene and therefore denies them. The Big 12 denies the remaining allegations of  
6 Paragraph 266.

7 267. The Big 12 admits that Mark Emmert testified before the Senate Commerce  
8 Committee in June 2021. The Big 12 denies the remaining allegations of Paragraph 267.

9 268. The Big 12 lacks sufficient knowledge or information to form a belief as to  
10 the truth of the allegations of Paragraph 268 and therefore denies them.

11 269. The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations in Paragraph 269 concerning an alleged undated Knight  
13 Commission report and therefore denies them. The Big 12 denies the remaining  
14 allegations of Paragraph 269.

15 270. Upon information and belief, the Big 12 admits that the Knight Commission  
16 has issued statements concerning student-athlete NIL. The Big 12 lacks sufficient  
17 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
18 270 concerning the alleged comments of the Knight Commission and therefore denies  
19 them. The Big 12 denies the remaining allegations of Paragraph 270.

20 271. The Big 12 admits that the NCAA has a process for accepting applications  
21 for waivers from student-athletes relating to the use of their NIL. The Big 12 further admits  
22 that the NCAA issued a Final Report and Recommendations on April 17, 2020 that  
23 contains the language quoted in part in Paragraph 271. The Big 12 lacks sufficient  
24 knowledge or information to form a belief as to the truth of the allegations in Paragraph  
25 271 concerning the number of waiver applications submitted and approved and  
26 concerning the alleged comments of Bernadette McGlade and therefore denies them. The  
27 Big 12 denies the remaining allegations of Paragraph 271.

1           272. The Big 12 admits that the NCAA issued a Final Report and  
2 Recommendations on April 17, 2020. The Big 12 lacks sufficient knowledge or information  
3 to form a belief as to the truth of the allegations in Paragraph 272 concerning the  
4 characterizations of the content and waivers allegedly granted and therefore denies them.  
5 The Big 12 denies the remaining allegations of Paragraph 272.

6           273. The Big 12 lacks sufficient knowledge or information to form a belief as to  
7 the truth of the allegations in Paragraph 273 concerning Arike Ogunbowale and therefore  
8 denies them. The Big 12 denies the remaining allegations of Paragraph 273.

9           274. The Big 12 denies the allegations of Paragraph 274.

10          275. The Big 12 admits that NCAA rules include limitations on compensation to  
11 student-athletes for the alleged use of their names, images, and likenesses. The Big 12  
12 denies the remaining allegations of Paragraph 275.

13          276. The Big 12 lacks sufficient knowledge or information to form a belief as to  
14 the truth of the allegations of Paragraph 276 and therefore denies them.

15          277. The Big 12 lacks sufficient knowledge or information to form a belief as to  
16 the truth of the allegations of Paragraph 277 and therefore denies them.

17          278. The Big 12 lacks sufficient knowledge or information to form a belief as to  
18 the truth of the allegations of Paragraph 278 and therefore denies them.

19          279. The Big 12 lacks sufficient knowledge or information to form a belief as to  
20 the truth of the allegations of Paragraph 279 and therefore denies them.

21          280. The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations of Paragraph 280 and therefore denies them.

23          281. The Big 12 lacks sufficient knowledge or information to form a belief as to  
24 the truth of the allegations of Paragraph 281 and therefore denies them.

25          282. The Big 12 lacks sufficient knowledge or information to form a belief as to  
26 the truth of the allegations in Paragraph 282 concerning an alleged Axios.com report on  
27 Opendorse and therefore denies them. The Big 12 denies the remaining allegations of  
28 Paragraph 282.

1           283. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations in Paragraph 283 concerning an alleged fivethirtyeight.com  
3 report on Opendorse and therefore denies them. The Big 12 denies the remaining  
4 allegations of Paragraph 283.

5           284. The Big 12 admits that there have been unverified media reports that certain  
6 student-athletes at some schools and in some sports have been offered or accepted  
7 compensation for the alleged use of their names, images, and likenesses following the  
8 passage of state NIL laws and issuance of the Interim NIL Policy. The Big 12 lacks  
9 sufficient knowledge or information to form a belief as to the truth of the allegations in  
10 Paragraph 284 concerning the alleged comments of Mark Emmert, the alleged interests of  
11 consumers, and the alleged beliefs of companies and therefore denies them. The Big 12  
12 denies the remaining allegations of Paragraph 284.

13           285. The Big 12 denies the allegations of Paragraph 285.

14           286. The Big 12 lacks sufficient knowledge or information to form a belief as to  
15 the truth of the allegations in Paragraph 286 concerning the alleged views of unidentified  
16 business leaders and senior executives and therefore denies them. The Big 12 denies the  
17 remaining allegations of Paragraph 286.

18           287. The Big 12 lacks sufficient knowledge or information to form a belief as to  
19 the truth of the allegations of Paragraph 287 and therefore denies them.

20           288. The Big 12 lacks sufficient knowledge or information to form a belief as to  
21 the truth of the allegations of Paragraph 288 and therefore denies them.

22           289. The Big 12 lacks sufficient knowledge or information to form a belief as to  
23 the truth of the allegations of Paragraph 289 and therefore denies them.

24           290. The Big 12 lacks sufficient knowledge or information to form a belief as to  
25 the truth of the allegations in Paragraph 290 concerning the alleged comments of Matt  
26 Micheli and therefore denies them. The Big 12 denies the remaining allegations of  
27 Paragraph 290.



1           291. The Big 12 lacks sufficient knowledge or information to form a belief as to  
2 the truth of the allegations of Paragraph 291 and therefore denies them.

3           292. The Big 12 lacks sufficient knowledge or information to form a belief as to  
4 the truth of the allegations of Paragraph 292 and therefore denies them.

5           293. The Big 12 lacks sufficient knowledge or information to form a belief as to  
6 the truth of the allegations of Paragraph 293 and therefore denies them.

7           294. The Big 12 lacks sufficient knowledge or information to form a belief as to  
8 the truth of the allegations in Paragraph 294 concerning the alleged comments of Blake  
9 Lawrence and therefore denies them. The Big 12 specifically denies that it has engaged in  
10 any unlawful conduct and denies the remaining allegations of Paragraph 294.

11           295. The Big 12 lacks sufficient knowledge or information to form a belief as to  
12 the truth of the allegations of Paragraph 295 and therefore denies them.

13           296. The Big 12 lacks sufficient knowledge or information to form a belief as to  
14 the truth of the allegations in Paragraph 296 concerning the alleged comments of Terry  
15 Tumey and therefore denies them. The Big 12 denies the remaining allegations of  
16 Paragraph 296.

17           297. The Big 12 lacks sufficient knowledge or information to form a belief as to  
18 the truth of the allegations of Paragraph 297 and therefore denies them.

19           298. The Big 12 lacks sufficient knowledge or information to form a belief as to  
20 the truth of the allegations of Paragraph 298 and therefore denies them.

21           299. The Big 12 lacks sufficient knowledge or information to form a belief as to  
22 the truth of the allegations of Paragraph 299 and therefore denies them.

23           300. The Big 12 admits that Plaintiffs seek to bring this action on behalf of the  
24 putative class identified in Paragraph 300 but denies that such class is properly defined or  
25 that this action can be maintained as a class action. The Big 12 denies the remaining  
26 allegations of Paragraph 300.

27           301. The Big 12 admits that Plaintiffs seek to bring this action on behalf of the  
28 putative sub-class identified in Paragraph 301 but denies that such sub-class is properly

1 defined or that this action can be maintained as a class action. The Big 12 denies the  
2 remaining allegations of Paragraph 301.

3 302. The Big 12 admits that Plaintiffs seek damages from defendants relating to  
4 NCAA rules establishing limitations on compensation to student-athletes for the alleged  
5 use of their names, images, and likenesses. The Big 12 denies that Plaintiffs are entitled to  
6 any such damages. The Big 12 specifically denies that it has engaged in any unlawful  
7 conduct. The Big 12 denies the remaining allegations of Paragraph 302.

8 303. The Big 12 admits that Plaintiffs seek to bring this action on behalf of the  
9 putative sub-class identified in Paragraph 303 but denies that such sub-class is properly  
10 defined or that this action can be maintained as a class action. The Big 12 denies the  
11 remaining allegations of Paragraph 303.

12 304. The Big 12 admits that Plaintiffs seek damages from defendants relating to  
13 NCAA rules establishing limitations on compensating student-athletes for the alleged use  
14 of their names, images, and likenesses. The Big 12 denies that Plaintiffs are entitled to such  
15 damages. The Big 12 specifically denies that it has engaged in any unlawful conduct. The  
16 Big 12 denies the remaining allegations of Paragraph 304.

17 305. The Big 12 admits that Plaintiffs seek to bring this action on behalf of the  
18 putative sub-class identified in Paragraph 305 but denies that such sub-class is properly  
19 defined or that this action can be maintained as a class action. The Big 12 denies the  
20 remaining allegations of Paragraph 305.

21 306. The Big 12 admits that Plaintiffs seek damages from defendants relating to  
22 NCAA rules establishing limitations on compensating student-athletes for the alleged use  
23 of their names, images, and likenesses. The Big 12 denies that Plaintiffs are entitled to such  
24 damages. The Big 12 specifically denies that it has engaged in any unlawful conduct. The  
25 Big 12 denies the remaining allegations of Paragraph 306.

26 307. The Big 12 admits that Plaintiffs refer in the Complaint to the putative class  
27 and sub-classes identified in Paragraphs in 300, 301, 303, and 305 as “the Classes.” The Big  
28 12 denies the remaining allegations of Paragraph 307.

1           308. The Big 12 admits that Plaintiffs seek to bring this action on behalf of the  
2 putative class identified in Paragraph 308 but denies that such class is properly defined or  
3 that this action can be maintained as a class action. The Big 12 denies the remaining  
4 allegations of Paragraph 308.

5           309. The Big 12 denies the allegations of Paragraph 309.

6           310. The Big 12 denies the allegations of Paragraph 310.

7           311. The Big 12 denies the allegations of Paragraph 311.

8           312. The Big 12 denies the allegations of Paragraph 312.

9           313. The Big 12 denies the allegations of Paragraph 313.

10          314. The Big 12 denies the allegations of Paragraph 314.

11          315. The Big 12 denies the allegations of Paragraph 315.

12          316. The Big 12 denies the allegations of Paragraph 316.

13          317. The Big 12 denies the allegations of Paragraph 317.

14          318. The Big 12 denies the allegations of Paragraph 318.

15          319. The Big 12 denies the allegations of Paragraph 319.

16          320. The Big 12 denies the allegations of Paragraph 320.

17          321. The Big 12 denies the allegations of Paragraph 321.

18          322. The Big 12 reincorporates and realleges by reference its answers and  
19 responses to the allegations set forth in all preceding paragraphs of the Amended  
20 Complaint as if fully set forth herein.

21          323. The Big 12 denies the allegations of Paragraph 323.

22          324. The Big 12 denies the allegations of Paragraph 324.

23          325. The Big 12 denies the allegations of Paragraph 325.

24          326. The Big 12 denies the allegations of Paragraph 326.

25          327. The Big 12 denies the allegations of Paragraph 327.

26          328. The Big 12 denies the allegations of Paragraph 328.

27          329. The Big 12 denies the allegations of Paragraph 329.

28          330. The Big 12 denies the allegations of Paragraph 330.

1           331. The Big 12 denies the allegations of Paragraph 331.

2           332. The Big 12 denies the allegations of Paragraph 332.

3           333. The Big 12 reincorporates and realleges by reference its answers and  
4 responses to the allegations set forth in all preceding paragraphs of the Amended  
5 Complaint as if fully set forth herein.

6           334. The Big 12 denies the allegations of Paragraph 334.

7           335. The Big 12 denies the allegations of Paragraph 335.

8           336. The Big 12 denies the allegations of Paragraph 336.

9           337. The Big 12 denies the allegations of Paragraph 337.

10          338. The Big 12 denies the allegations of Paragraph 338.

11          339. The Big 12 denies the allegations of Paragraph 339.

12          340. The Big 12 denies the allegations of Paragraph 340.

13          341. The Big 12 denies the allegations of Paragraph 341.

14          342. The Big 12 denies the allegations of Paragraph 342.

15          343. The Big 12 denies the allegations of Paragraph 343.

16          344. The Big 12 denies the allegations of Paragraph 344.

17          345. The Big 12 reincorporates and realleges by reference its answers and  
18 responses to the allegations set forth in all preceding paragraphs of the Amended  
19 Complaint as if fully set forth herein.

20          346. The Big 12 denies the allegations of Paragraph 346.

21          347. The Big 12 denies the allegations of Paragraph 347.

22                                   **ADDITIONAL DEFENSES**

23          The Big 12 reserves the right to assert any and all applicable defenses to the  
24 Plaintiffs' claims. The Big 12 reserves the right to amend this Answer to add, supplement,  
25 or modify its defenses based upon further developments in this litigation, including new  
26 factual developments or legal theories that may be or will be divulged through  
27 clarification of the Amended Complaint, through discovery, or through further factual or  
28 legal analysis of Plaintiffs' allegations, contentions, and positions in this litigation.

1 Without limiting the generality of the foregoing and without regard to whether defenses  
2 set forth below are affirmative defenses within the meaning of Federal Rule of Civil  
3 Procedure 8(c)(1), and without conceding that any such defenses must be set forth in this  
4 Answer or assuming any burden of proof that it would not otherwise bear, the Big 12  
5 states as follows:

6 **FIRST ADDITIONAL DEFENSE**

7 The claims of certain named plaintiffs and members of the putative classes and sub-  
8 classes are barred, in whole or in part, by the settlement and release finally approved by  
9 the Court in *In re National Collegiate Athletic Association Athletic Grant-in-Aid Cap Antitrust*  
10 *Litigation*, Case No. 14-md-02541 (N.D. Cal).

11 **SECOND ADDITIONAL DEFENSE**

12 The claims of the Plaintiffs and alleged members of the putative class and sub-  
13 classes are barred, in whole or in part, by stare decisis and also by res judicata to the extent  
14 that Plaintiffs' claims were previously adjudicated in *NCAA v. Alston*, 141 S. Ct. 2141  
15 (2021), *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015), or *Marshall v. ESPN*, 668 Fed.  
16 App'x 155 (6th Cir. 2016), or to the extent they are adjudicated in any other litigation  
17 brought by members of the Plaintiffs' putative classes against any of the Defendants that  
18 reaches final judgment before a judgment is rendered in this action.

19 **THIRD ADDITIONAL DEFENSE**

20 The claims of the Plaintiffs and others claimed to be members of the putative class,  
21 classes, or sub-classes are barred, in whole or in part, by collateral estoppel to the extent  
22 that the Plaintiffs' claims were previously adjudicated in *NCAA v. Alston*, 141 S. Ct. 2141  
23 (2021), *O'Bannon v. NCAA*, 802 F.3d 1049 (9th Cir. 2015), or *Marshall v. ESPN*, 668 Fed.  
24 App'x 155 (6th Cir. 2016), or to the extent they are adjudicated in any other litigation  
25 brought by members of the Plaintiffs' putative classes and sub-classes against any of the  
26 Defendants that reaches final judgment before a judgment is rendered in this action.

27 **FOURTH ADDITIONAL DEFENSE**

28 The claims of the Plaintiffs and alleged members of the putative class and sub-

1 classes are barred, in whole or in part, by the applicable statute of limitations.

2 **FIFTH ADDITIONAL DEFENSE**

3 The claims of the Plaintiffs and alleged members of the putative class and sub-  
4 classes are barred, in whole or in part, by the doctrine of mootness to the extent that  
5 Plaintiffs seek injunctive relief for student-athletes who are no longer participating in  
6 NCAA athletics and to the extent that the NCAA bylaws that Plaintiffs seek to enjoin are  
7 no longer in effect.

8 **SIXTH ADDITIONAL DEFENSE**

9 The claims of the Plaintiffs and others claimed to be members of the putative class,  
10 classes, or sub-classes are barred because their alleged damages are speculative and  
11 conjectural and are not capable of calculation with a reasonable degree of certainty.

12 **SEVENTH ADDITIONAL DEFENSE**

13 The claims of the Plaintiffs and alleged members of the putative class and sub-  
14 classes are barred, in whole or in part, because the Complaint fails to state a claim for relief  
15 under the doctrine established by the United States Supreme Court's decision in *Texaco*  
16 *Inc. v. Dagher*, 547 U.S. 1 (2006). Specifically, the conduct alleged constitutes decisions  
17 made regarding the core activities of a legitimate venture that are not unlawful restraints  
18 of trade under the antitrust laws.

19 **EIGHTH ADDITIONAL DEFENSE**

20 The claims of the Plaintiffs and alleged members of the putative class and sub-  
21 classes are barred, in whole or in part, to the extent that any of the agreements, practices,  
22 or conduct at issue is required or has been approved by any order, award, directive or  
23 similar action of any court, arbitral body, or government agency.

24 **NINTH ADDITIONAL DEFENSE**

25 The claims of the Plaintiffs and alleged members of the putative class and sub-  
26 classes are barred, in whole or in part, to the extent that any of the agreements, practices,  
27 or conduct at issue is required to comply with state or federal laws or regulations and to  
28 the extent that the relief demanded by Plaintiffs is inconsistent with or prohibited by

1 applicable state or federal laws or regulations.

2 **TENTH ADDITIONAL DEFENSE**

3 The claims of the Plaintiffs and alleged members of the putative class and sub-  
4 classes are barred, in whole or in part, because the actions of Defendants do not  
5 unreasonably restrain trade, but are lawful, justified, and pro-competitive given the need  
6 for institutional members of the NCAA to prevent pay-for-play and improper recruiting  
7 inducements, including by imposing uniform rules of national competition regarding  
8 financial incentives for student-athletes to attend particular schools.

9 **ELEVENTH ADDITIONAL DEFENSE**

10 The claims of the Plaintiffs and alleged members of the putative class and sub-  
11 classes are barred, in whole or in part, because the actions of Defendants do not  
12 unreasonably restrain trade, but are lawful, justified, and pro-competitive by preserving  
13 the distinction between college and professional sports.

14 **TWELFTH ADDITIONAL DEFENSE**

15 The claims of the Plaintiffs and alleged members of the putative class and sub-  
16 classes are barred, in whole or in part, and the actions of Defendants are justified by the  
17 provisions of the United States Constitution that guarantee free speech and the right to  
18 petition the government for redress of grievances under the *Noerr-Pennington* doctrine.

19 **THIRTEENTH ADDITIONAL DEFENSE**

20 The claims of the Plaintiffs and alleged members of the putative class and sub-  
21 classes are barred, in whole or in part, to the extent that they were not injured by, or have  
22 been enriched by, the rules being challenged here, which preserve institutions' ability to  
23 offer a broad set of athletics offerings and, thus, opportunities to student-athletes.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, The Big 12 Conference, Inc. prays that this Court deny the relief  
26 requested by Plaintiffs, dismiss this action with prejudice, enter judgment that Plaintiffs  
27 have and recover no relief from the Big 12, tax costs and attorneys' fees against the  
28 Plaintiffs, and afford the Big 12 such other and further relief as may be just and proper.



1 DATED: September 22, 2021

Respectfully submitted,

2 **POLSINELLI PC**

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